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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,578	11/07/2001	Prem Chandar	J6674(C)	4054

201 7590 02/08/2005

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/036,578	Applicant(s) CHANDAR ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

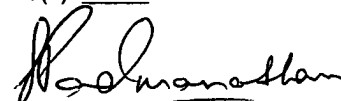
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 1, 2, 7, 8 and 13-16.
 Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of No. 11:

Applicants' remarks have been fully considered but are unpersuasive. Applicants traverse the obviousness rejections on the ground that the cited references failed to suggest selecting "oils that will lead to stability of retinoids in the presence of boosters at elevated temperature".

While applicants assert that the present invention is "to ensure a retinoid half-life of at least about 20 days at 50 degree C", the claimed invention is in fact a composition having the recited stability. A composition comprising the recited components would obvious have the same stable property as asserted by applicants. Examiner reiterates the well-settled patent law that, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). While applicants assert that selecting oils with low POV is an unexpected and nonobvious choice through out the remarks filed on December 20, 2004, the Potter reference teaches otherwise. The reference clearly teaches that lower the POV, fresher and more highly preferred the oil is. This specific teaching teaches more than the possibility of combining the references; rather, it provides the motivation a skilled artisan would have employed in a cosmetic formulation in order to produce a highly stable composition, just as applicants have done.

Regarding the lobst declaration filed on July 21, 2004, examiner views that the data shown in Table 1 is an objective fact. However, the declarant's statement that

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these results amount to an unexpected result is not persuasive because it appears that the teachings of Potter have not been taken into consideration. Applicants' assertion that the teaching of Potter is limited to the stability of the oil with low POV per se rather than the stability of retinoid is unpersuasive. The reference teaches that "the peroxide value is a titration which measure the levels of organic peroxides present in a fat and is a measure of the oxidative stability of the fat, and thus, its **antioxidant effectiveness**." See Potter, col. 1, lines 33 – 40. The reference specifically teaches the effect of the antioxidant "in enhancing the storage stability of lipid-containing food products". See col. 4, lines 47 – 53. The reference teaches in col. 4, lines 63 - 67 that the oat oil compositions "increase the stability of oils"; and in fact illustrates in col. 8, lines 9 – col. 9, lines 6 the effect of the oat oil in extending the shelf-life of canola oil. While Potter is directed to oat oil, the reference specifically teaches that the effectiveness of antioxidant property of oat oils is due to the low POV; and thus it would have been obvious to one of ordinary skill in the art that oils having low POV, as used in the present invention, would extend the shelf-life of lipid components, such as retinoids. While the canola oil/oat oil shelf-life example was conducted at temperature of 35 degree C, the reference teaches that oat oils having a POV close to zero "up to about 50 days at 60 degree C", thus it is viewed obvious that the antioxidant property is not lost even at that high temperature. See col. 5, lines 34 – 36. Given these benefits of using oils with low POV's, the selection of using such oils only in a composition, as claimed by applicants, is viewed an obvious choice for one of ordinary skilled in the art.

Applicants also assert that combining Granger et al. (US 5716627), Potter, and Granger et al. (WO/13020) is improper allegedly because '020 teaches away from using a fatty acid amide. Examiner reiterates that the exclusion of "fatty acid amide or dimethyl imidazolidinone" from LRAT or ARAT esterification inhibitors merely sets forth the scope of the prior art invention, by indicating what compounds are not specifically encompassed. There is no teaching that fatty acid amides "cannot be combined" with the '020 invention. See MPEP 2145 X.D.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-0635. The examiner can normally be reached on Monday through Friday, from 8:30 AM until 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gina Yu
Patent Examiner